

**FILED**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION

JAN 23 2020  
Clerk, U.S. District Court  
District Of Montana  
Missoula

SCHMAUS FAMILY PROPERTIES,  
LLC, a Montana Limited Liability  
Company, and JOSEPH H.  
SCHMAUS,

Plaintiffs,

vs.

UNITED STATES BUREAU OF  
LAND MANAGEMENT, et al.,

Defendants.

CV 17-68-H-DLC-JTJ

ORDER

United States Magistrate Judge John T. Johnston entered his Findings and Recommendations on December 19, 2019 recommending that this case be dismissed without prejudice for failure to complete service of process. (Doc. 9). Neither party objected to the Findings and Recommendations. A month has passed since entry of the Findings and Recommendations, and the time to object has expired. As such, this matter is unobjected.

A party is only entitled to de novo review of those findings to which he or she specifically objects. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings to which no party objects. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear

error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

On June 9, 2017, Plaintiffs Schmaus Family Properties, LLC, and Joseph Schmaus filed this action pro se. (Doc. 1). Plaintiffs did not complete service of process within 90 days as required by Rule 4 of the Federal Rules of Civil Procedure.

On February 27, 2018, Judge Johnston provided Plaintiffs an additional month to complete service, ordering Plaintiffs to serve Defendants by March 27, 2018 or show cause why the case should not be dismissed without prejudice. (Doc. 3).

On March 19, 2018, Plaintiffs moved to extend the deadline for service of process. (Doc. 4). The Court denied the motion for lack of good cause. (Doc. 8). Accordingly, the deadline for service of process remained March 27, 2018.

Plaintiffs did not serve Defendants by March 27, 2018. Furthermore, Plaintiffs still had not served Defendants as of December 19, 2019 when Judge Johnston entered his Findings and Recommendations. (Doc. 9). Over two years have passed since Plaintiffs initially filed this action, and service of process has still not been completed.

Therefore, having reviewed for clear error and finding none,

IT IS ORDERED that Judge Johnston's Findings and Recommendation  
(Doc. 9) is ADOPTED in full.

1. This case is DISMISSED without prejudice for failure to serve  
Defendants with process.
2. The Clerk of Court is directed to enter judgment accordingly.

DATED this 23<sup>rd</sup> day of January, 2020.



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Dana L. Christensen, Chief Judge  
United States District Court